IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

(PIL) WRIT PETITION (LODG.) NO.34 OF 2006

Sanjay Raut ..Petitioner.

Vs.

Union of India & Ors. .. Respondents.

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Mr. J.P. Cama, Senior Advocate with Mr. K.P. Anilkumar for the Petitioner.

Mr. Rui Rodrigues with Mr. Mandar Goswami for Respondent Nos.1 and 2.

Mr. Shekhar Naphade, Senior Advocate with Mr. J.S. Saluja instructed by M/s. M.V. Kini & Co. for Respondent Nos.3 to 5.

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CORAM:KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

5th April, 2006.

P.C. (Per DR. D.Y. CHANDRACHUD, J.) :

1. The Petitioner who is a member of Parliament and a member of the Civil Aviation Consultative Committee of the Government of India has instituted these proceedings in the public interest seeking a direction to (i) Air India to “cease and desist from compromising public safety and to strictly follow air safety regulations as framed by the DGCA under the Aircraft Act, 1934 and the Aircraft Rules 1937”; (ii) DGCA “not to deviate from its original decision of not accepting” Air India's recommendation for “relaxation of the

mandatory command hours for a pilot to be recommended for the commencement of" instructor training. A further direction has been sought from this Court by way of punitive sanctions against the Chairman and Managing Director of Air India and the Director -Operations for sending four "unqualified pilots for training as instructors thereby causing wastage of public money".

2. In October 2004 Air India decided to induct Boeing 777 aircraft into its fleet. In pursuance of that decision actual operations commenced in January 2005. At that stage, no pilot was qualified to fly Boeing 777 aircraft and the aircraft being new, Air India decided to select its senior most four examiners on the Airbus A-310 aircraft for conversion to B-777. According to Air India, these senior examiners were specially selected as they had a considerable experience and had no adverse reports. The training commenced in October and November 2005. Three of the four pilots completed their training in January 2006 while the fourth has completed his training on 17th February, 2006. All the four pilots have been duly certified by a Boeing examiner for release as flight instructors on B-777 aircraft. It is undisputed that the four pilots as of date have an experience each of 8000 to 10000 flying

hours.

3. The grievance of the Petitioner is that Air India, in allowing these four pilots to commence instructor training did not adhere to the requirements stipulated by the Director General of Civil Aviation in the Civil Aviation Requirements, Section 7, entitled 'Flight Crew Standards Training & Licensing' dated 27th May, 1998. These requirements, abbreviated as CAR, are issued under Rule 133A of the Aircraft Rules 1937 and lay down minimum requirements for approval of Check-Pilots, instructors and Examiners for the purposes specified in Rule 41-A and Schedule II of the Rules. The controversy relates to Clause 3.2. of this CAR, the material part of which is as follows :

"3.2 Instructor :

(i)Total Flying Experience	- 3,500 hours
(ii)Total Command Experience	- 1,500 hours
(iii)Total Command Experience on the type	- 1,000 hours
(iv)Experience as approved Check-Pilot on the type	- 10 route checks and one year of working as a Check-Pilot on the type of aircraft"

4. More specifically, a reference has been made to the

requirement that the total command experience on the type of aircraft should be 1000 hours. Clause 3.5. of the CAR provides that the total command experience on the type for approval as an instructor shall be relaxable upto 500 hours, and the provision is as follows :

> "3.5 - The total command experience on the type for approval as an Instructor shall be relaxable to 500 hours in case a pilot has instructional experience of not less than 200 hours or has acted as functional Examiner for a period not less than one year on another aircraft with the same operator."

Finally, it would be material to advert to the provisions of Clause 6 which is follows :

> "6. In case adequate number of pilots meeting fully the aforesaid requirements are not available with an operator, the Director General may, at his discretion, relax the requirements taking into consideration the past performance, the flying record and the experience of a pilot proposed for approval by the operator. The DGCA may also authorise for a specified period Examiners/ Instructors/ Check Pilots or pilots of equivalent status approved as such by any contracting State, to exercise the privileges of Examiners/ Instructors/ Check Pilots as given in this CAR."

5. On 17th October, 2005, the Chief Flight Operations Inspector, for the Director General of Civil Aviation, addressed a letter to Air India with reference to its request for relaxation in flying experience

requirements of its commanders for undergoing training as instructors/ examiners after the completion of 200 hours. DGCA informed Air India that the request for relaxation had not been accepted and Air India was called upon to comply with the existing flying requirement laid down in Section 7 of the CAR dated 27th May, 1998. In that context, the letter further stated thus:

> "It is understood that Air India has commenced training of their Commanders for approval as Examiner on B.777-200 aircraft without meeting the Civil Aviation Requirements. It is clarified that any training undertaken by your Commanders for approval as Instructor/ Examiner on type without meeting the Civil Aviation Requirements shall not be accepted by this office."

6. From the material on the record it appears that on 3rd March, 2006 the Chairman and Managing Director of Air India addressed a letter to the DGCA stating that the CAR does not prescribe that training cannot commence prior to the fulfillment of the total requirement of flying hours. Air India's position was that the privileges of rating cannot be utilized without meeting the requirements stipulated by the DGCA. Air India relied upon, what it noted, was a worldwide practice and the practice of Air India for several years in connection with A-310 and B-747-400 aircraft and

stated that there was a necessity to train Indian captains as Instructors at the earliest to reduce dependence on foreign instructors. The letter finally stated that if the directions of DGCA were required to be complied with afresh, it would mean that these pilots who had already been sent for training would need to repeat the training already carried out.

7. DGCA has on 31st March, 2006 granted Air India's request to a limited extent by deciding to accept the training of Air India pilots as instructors on Boeing 777 aircraft which had since been completed. However, the letter clarifies that the privileges of rating of an instructor pilot can only be utilized after these pilots who had undergone training meet the requirements of flying experience as contained in the CAR on the subject and also that the final release check of these instructors shall be carried out on simulators / aircraft by the Flight Operations Inspector and/or an examiner nominated by DGCA.

8. In reply to the Petition an affidavit has been filed by the Deputy General Manager – HRD (Operations) of Air India in which it has been stated that the Petition has been filed at the behest of a

pilot who came to be dismissed from the services of Air India on 9th August, 2004. It has been stated that the aforesaid pilot who was the General Secretary of the Indian Pilots Guild had issued various directives including one on 22nd April, 2003 calling upon member pilots not to operate flights to Kuwait due to the ongoing Iraq war and to SARs affected countries which resulted in an illegal strike to the detriment of the company. The litigation instituted by the dismissed pilot is stated to be pending. On merits, Air India has sought to justify its position as being consistent with the requirement of Section 7 of the CAR dated 27th May, 1998. According to Air India Clause 5 of Appendix A to the CAR inter alia provides as follows :

> "5. TRAINING OF INSTRUCTOR (WITH PREVIOUS EXPERIENCE IN THE SAME CAPACITY)
>
> These training requirements are for the pilots who have exercised the privileges in the same capacity as Instructors on other aircraft of the same category (i.e. Turboprop or Turbojet) in the preceding 36 months."

Hence, according to Air India its four senior most pilots had already acquired a minimum of 1000 hours of command experience on A-310 aircraft and a minimum of 500 hours of command experience

on B-777 which must be regarded as being in compliance with the requirement of Section 7 of the CAR. In any event it has been submitted that in view of the latest decision of DGCA dated 3rd March, 2006 there is no merit in the grievance of the Petitioner and the decision of DGCA which is an expert body should be accepted.

9. At the hearing of the Petition, it is common ground between all the learned counsel, including learned counsel for the Petitioner, that DGCA's decision dated 31st March, 2006 which has been accepted by Air India would be sufficient to resolve the first part of the grievance in these proceedings viz. that relating to the eligibility of the four pilots who were sent for training. DGCA has agreed to accept the training that has been imparted to these four pilots on B-777 aircraft subject to the condition that the privileges of rating of an instructor pilot can be utilized only after these four pilots meet the requirements of flying experience and that a final release check is carried out as directed in the communication dated 31st March, 2006. The learned counsel appearing for the Petitioner, however, submitted that there is an apprehension that in future, Air India is likely to assign additional pilots for instructor training without their

meeting the requirements of Clause 3.2 read with Clause 3.5 of the CAR dated 27th May, 1998. On behalf of Air India it has been submitted that there is absolutely no merit either in the interpretation that has been sought to be placed by the Petitioner on the relevant provisions of the CAR or in the apprehension raised before the Court. However, to establish the bonafides of Air India, it has been stated that for the present Air India does not intend to send any further batch of pilots for instructor training and that before Air India sends any additional pilots for instructor training, it will seek a clarification / interpretation by the DGCA of the applicable provisions of the CAR noted earlier. On the request of its counsel, we, however, reserve liberty to Air India to take recourse to its remedies in law, should it be aggrieved by the interpretation that is placed by DGCA. In view of the statement which has been made on behalf of Air India, learned counsel appearing for the Petitioner states that this Petition is not pressed any further and may be accordingly disposed of since no other issues are raised at the present time. In the circumstances, we dispose of the Petition in the light of the aforesaid statement.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.